

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JERRY DORAN,

NO. CIV. S-04-0003 FCD PAN

Plaintiff,

MEMORANDUM AND ORDER

JJ MOTELS dba SUPER 8  
MOTEL,

Defendant.

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This matter is before the court on plaintiff Jerry Doran's motion for attorneys' fees, including litigation expenses and costs, under the Americans with Disabilities Act ("ADA") and California law.<sup>1</sup> Plaintiff brought this suit against defendant JJ Motels dba Super 8 Motel, alleging that a number of architectural barriers he encountered at the motel violated the

<sup>1</sup> Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. See E.D. Cal. Local Rule 78-230(h).

1 ADA, 42 U.S.C. § 12101 *et seq.*, and various state laws.<sup>2</sup>

2 On May 23, 2005 the court entered judgment in favor of  
3 plaintiff pursuant to the court's order of May 23, 2005, granting  
4 plaintiff's motion for summary judgment based on defendant's non-  
5 opposition thereto. (Non-Opp'n, filed May 13, 2005.)

6 Plaintiff now moves for attorneys' fees, including  
7 litigation expenses and costs, in the amount of \$28,642.28.  
8 42 U.S.C. § 12205. In large part, defendant does not oppose  
9 plaintiff's motion. "Defendant does not oppose the motion in so  
10 far as it seeks attorneys' fees of \$8,910.00 and paralegal and  
11 legal assistant fees of \$1,757.00. Further, the expert fees or  
12 costs requested of \$16,231.88 are not opposed by defendant."  
13 (Kays Decl., filed Aug. 12, 2005, ¶ 3.) Thus, defendant agrees  
14 to pay \$26,898.88.

15 Defendant objects to the remainder of the fee request on two  
16 grounds: First, some of the fees/expenses were requested in  
17 plaintiff's bill of costs and the appropriate award was made by  
18 the court. These are (1) fees of the clerk (\$150.00); (2) fees  
19 for service of process (\$132.00); (3) the subpoenaed documents  
20 charge (\$359.00); and (4) photocopies (\$107.50). Defendant is  
21 correct. These fees were previously considered and ruled upon by  
22 the court in its June 21, 2005 order on plaintiff's bill of costs  
23 and are not properly sought again here.

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26 <sup>2</sup> Plaintiff's motion for fees was originally noticed for  
27 hearing on August 12, 2005. However, the court continued the  
28 hearing to August 26 due to defendant's failure to file a timely  
opposition or statement of non-opposition to the motion. (Order  
to Show Cause, filed August 2, 2005.)

1       Second, defendant objects to certain fees as unnecessary or  
2 not reasonably related to preparation of the case. Specifically,  
3 defendant objects to the request for overnight mail expenses  
4 (\$45.10), the generic charges for flat rate on calls and faxes  
5 (\$50.00), the asset report (\$550.00) and the preliminary site  
6 inspection (\$350.00). The ADA provides for the recovery of  
7 reasonable out-of-pocket litigation expenses in addition to  
8 attorneys' fees. 42 U.S.C. § 12205. Here, defendant argues that  
9 overnight mail expenses were not necessary expenses for service  
10 of any document in the case, and the charges for telephone calls  
11 and faxes are not properly charged to defendant; the asset  
12 report, defendant maintains, is a *post-judgment* collection  
13 effort, and the site inspection report is duplicative of other  
14 expert and attorney work already charged by plaintiff. Plaintiff  
15 did not file a reply to respond to defendant's objections, and  
16 his moving papers do not describe the reasonableness of each of  
17 these claimed litigation expenses (rather plaintiff only makes a  
18 general request for fees for these expenses). (Mem. of P. & A.,  
19 filed June 21, 2005, at 5:18-23). As such, the court does not  
20 award fees for these expenses.

21       Accordingly, the court awards plaintiff fees in the amount  
22 of \$26,898.88. The order to show cause, filed August 2, 2005, to  
23 defendant's counsel is DISCHARGED based on counsel's declaration  
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1 filed August 12.

2 IT IS SO ORDERED.

3 DATED: August 25, 2005

5 /s/ Frank C. Damrell Jr.

6 FRANK C. DAMRELL, Jr.

7 UNITED STATES DISTRICT JUDGE

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